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**LAW263H1 S LEC0101 20221: THE LAW OF WORK  
2022 WINTER TERM  
CASES AND COURSE MATERIALS**

**Volume III**

**Prof. Brian Langille**

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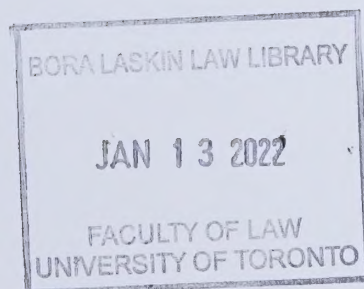




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## **Volume III**

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**THE LAW OF WORK**  
**2022 Winter Term**  
**Tuesdays and Thursdays, 4:10-6:00 pm**

**PROFESSOR BRIAN LANGILLE**

Office: Room 454 - Jackman  
Office Hours: Friday Afternoon after 1:00 pm, by appointment (e-mail in advance)  
Email: [brian.langille@utoronto.ca](mailto:brian.langille@utoronto.ca)

**COURSE OUTLINE**

<b>SESSION 1</b> <b>Tues, Jan 11</b>	<b>What is Labour Law? How do we know?</b> Langille, "Labour Law's Back Pages"	CB 24-29
<b>SESSION 2</b> <b>Thurs, Jan 13</b>	<b>The "Contractual Lens" and a set of very basic issues it generates</b>	
	<b>Who is an Employee? Who is an Employer? - Common Law and Beyond</b>	
	1. Kahn-Freund, Langille and Davidov	CB 228-235
	2. Carter v Bell (OCA, 1936)	CB 235
	3. Denham v. Midland Mutual	Q
	4. Lian v. J Crew	Q
	5. Prassl and Risak, "Uber, Taskrabbit and Co."	CB 240
	6. Faskens (SCC, 2014)	CB 1159
	7. Robichaud (SCC, 1987)	CB 1150
	8. United Independent Operators (OCA, 2011)	Q
	9. R v City of London (OCJ, 2020)	Q
	10. Tim Hortons	CB 1155
<b>SESSION 3</b> <b>Tues, Jan 18</b>	<b>The Common Law I</b>	
	<b>A. General</b>	
	11. MacNeil, "The Many Futures of Contract" pp. 693-696, 720-725	Q
	<b>B. "Management Rights" at Common Law I - Existing "rights"</b>	
	12. Greenberg v. Meffert	Q
	<b>C. "Management Rights" at Common Law II - Changing "rights"/Constructive Dismissal</b>	
	13. Peerless Laundry v. Neal	Q
	14. KMA Caterers v. Howie	Q
	15. Hill v. Peter Gorman	Q
	16. Wronko v. Western Inventory	Q
	17. Potter v New Brunswick Legal Aid (SCC, 2015)	CB 284
	18. Chapman v GPM Investment Management (OCA, 2017)	Q
<b>SESSION 4</b> <b>Thurs, Jan 20</b>	<b>The Common Law - II</b>	
	<b>A. Employee Breach ("Cause")/"Lesser Penalties"</b>	
	19. Laws v. London Chronicle	Q
	20. McKinley v. BC Tel (SCC)	CB 274



	<b>B. Contract and Tort</b>	
	21. Douglas v. Kinger (OCA, 2008)	Q
	22. Sataur v Starbucks (OCA, 2017)	Q
	And ....Recall London Drugs (SCC) from 1 <sup>st</sup> Year Contracts	
	<b>C. Fiduciary Obligations/Non-Competes</b>	
	23. RBC Dominion v. Merrill Lynch (SCC) (see especially Abella's dissent)	Q
	24. Employment lawyers grow unnerved as the use of non-compete clauses spread across Canada" (Globe and Mail, Sept 28, 2019)	Q
<b>SESSION 5 Tues, Jan 25</b>	<b>The Common Law - III – The Implied Term of Reasonable Notice</b>	
	25. Bardhal v. Globe and Mail	Q
	26. Machtinger v. HOJ (SCC, 1992)	CB 1031
	27. Cronk v. Canadian General Insurance (including note re: Ont. CA decision)	CB 298
	28. Ceccol v. Ontario Gymnastic Federation	CB 248
	29. Nardocchio v. CIBC	Q
	30. Wallace v. United Grain Growers (SCC, 1997)	CB318
	31. ***AND DISSENT***	CB 318
	"Blue J. Legal" Demonstration with Prof. Niblett	
<b>SESSION 6 Thurs, Jan 27</b>	<b>The Common Law - IV</b>	
	<b>A. Remedies</b>	
	32. Keys v. Honda Canada Inc. (SCC, 2008) <i>(Query – does Keys overrule Wallace?)</i>	CB 326
	33. Boucher v Walmart Canada and Pinnock (OCA)	Q
	34. Matthews v Ocean Nutrition (SCC, 2020)	Q
	<b>B. Contracting Out of Reasonable Notice</b> Visit of Stephan Moreau (Cavalluzzo's)	
<b>SESSION 7 Tues, Feb 1</b>	<b>The Common Law - V</b>	
	<b>A. Human Rights at Common Law</b>	
	35. Christie v. York (SCC, 1944)	Q
	36. Seneca College v Bhadauria (SCC, 1981)	Q
	37. Keys v. Honda (Session 5)	
	38. Ontario Human Rights Code, s. 46.1	
	<b>B. Freedom of Association at Common Law</b>	
	39. "Estevan 1931"	CB 409



<b>SESSION 8</b> <b>Thurs, Feb 3</b>	<b>Collective Bargaining</b>	
	<b>A. Scope (Who is an Employee/Employer? Again)</b>	
	40. Hearst Publications (USSC, 1944)	Q
	OLRA s.1(1)	
	<b>B. Dependent Contractors</b>	
	OLRA s.1(1)	
	41. Foodora (OLRB, 2020)	Q
	<b>C. Exclusions</b>	
	<b>a) "Rational"</b>	
	OLRA s.1(3)(b)	
	42. Corporation of the District of Burnaby (1974, BCLRB, (Weiler)	CB 351
	43. Children's Aid Ottawa-Carleton	CB 364
	<b>b) "Irrational"</b>	
	OLRA s.1 (3) a and s.3	
	See (later) – Fraser (OCA and SCC)	
	<b>D. Employer</b>	
	44. Pointe Claire (SCC, 1997)	CB 385
	And ...Reread Denham v. Midland Mutual, Session 2	
	<b>E. Trade Unions</b>	
	45. Smith & Rhuland v. Nova Scotia (SCC, 1953)	CB 379
	46. Kubota	Q
<b>SESSION 9</b> <b>Tues, Feb 8</b>	<b>"Recognition" and "Unfair Labour Practices"</b>	
	<b>A. Introduction</b>	
	47. Re-read "Estevan" (CB 409)	
	<b>B. "Motive" and "Non-motive ULPs"</b>	
	OLRA ss. 5, 70, 72	
	48. Int'l Wallcoverings (OLRB)	CB 416
	49. CBC v. CLRB ("Goldhawk") (SCC, 1995)	CB 423
	<b>C. "The Freeze"</b>	
	OLRA s. 86	
	50. Exchange Parts (USCA, 1941) (Query - why is this case HERE?)	CB 439
	OLRA s. 12.1	
<b>SESSION 10</b> <b>Thurs, Feb 10</b>	<b>Unfair Labour Practices II</b>	
	<b>A. Free Speech</b>	
	51. Walmart (see now OLRA s. 11)	CB 440
	<b>B. No Solicitation Rules</b>	
	52. Canada Post	CB 450



	<b>C. Plant Shutdown?</b>	
	53. Plourde v. Walmart (SCC, 2009)	Q
	54. UFCW v. Walmart (SCC, 2014)	CB 465
	55. Teamsters v. FedEx (CIRB, 2015)	Q
	<b>D. Remedies</b>	
	OLRA ss. 11, 96, 98	
	56. National Bank of Canada - both CLRB and SCC	CB 460 and 461
	<b>E. Professional responsibility of Labour Lawyers</b>	
	57. LSUC v. Rovet	CB 471

<b>SESSION 11</b> <b>Tues, Feb 15</b>	<b>Bargaining Units and Certification</b>	
	OLRA ss. 6.1, 7, 8, 9, 10, 15	
	58. Elizabeth Lennon, "Organizing the Unorganized"	CB 491
	59. CIBC (CLRB, 1977)	CB 493
	60. TD Sudbury	CB 498
	61. CB 503-506, including NSLRB decision in Michelin Tires and Langille discussing BCLRB decision in Amon Investments	
	And...Reread Lian v. J Crew ("just the facts")	
<b>SESSION 12</b> <b>Thurs, Feb 17</b>	<b>The Duty To Bargain</b>	
	<b>A. Content</b>	
	OLRA s. 17	
	62. Devilbiss	CB 543
	63. Graphic Arts	CB 544
	64. Noranda	CB 545
	65. Radio Shack	CB 552
	66. Canada Trustco	CB 559
	67. Langille and Macklem	CB 562
	68. Royal Oak Mines (SCC, 1996)	CB 566
	<b>B. Scope</b>	
	69. Pulp and Paper (BCCRB, Weiler, 1978)	Q
	70. Langille	CB 576
	71. Consolidated Bathurst	CB 578

**- READING WEEK -**  
**FEBRUARY 22-25**

<b>SESSION 13</b> <b>Tues, Mar 1</b>		
	<b>A. The Duty To Bargain - Remedies</b>	
	72. Royal Oak Mines, (SCC, 1996)	CB 584
	73. Egg Films (NSLRB)	CB 589
	<b>B. Economic Conflict I - The Constitutional Issue</b>	
	Alberta Reference - "The Trilogy" (SCC, 1986):	
	74. - LeDain's judgement	CB 871
	75. - McIntyre's judgement	



	76. - Dickson's judgement	
	77. SaskFed (SCC, 2015)	CB 972
	78. Canada Post (Ont. Sup. Ct., 2016)	
	79. UFCW V Medleaf (AFFRAT, 2020)	Q
<b>SESSION 14</b> <b>Thurs, Mar 3</b>	<b>Economic Conflict II</b>	
	<b>A. What is a Strike? A Lockout?</b>	
	OLRA s.1(1)	
	<b>a) Strike</b>	
	80. Graham Cable	CB 606
	81. ILA v. MEA (SCC, 1979)	CB 611
	82. Nelson Crushed Stone (OLRB)	CB 613
	83. Political Protests/"Gone Fishin'"	CB 614
	<b>b) Lockout</b>	
	84. Westroc Industries (OLRB, Adams)	CB 620
	<b>B. Multiple Fora</b>	
	85. St. Anne Nakawic (SCC, 1986)	CB 637
	OLRA s.100	
<b>SESSION 15</b> <b>Thurs, Mar 8</b>	<b>Economic Conflict III – Picketing</b>	
	86. Hersees of Woodstock (OCA, 1963)	CB 660
	87. Pepsi-Cola (SCC, 2002)	CB 663
	88. Consolidated Bathurst (OLRB)	Q
	<b>Economic Conflict IV- Employee Status, Employee Unilateral Action During a Strike</b>	
	89. Rogers Cable	CB 647
	90. Royal York	CB 673
	91. Eastern Provincial Airways	CB 675
	92. McGavin Toastmaster (SCC, 1976)	CB 781
	93. Neenah Paper (OLRB, 2006)	CB 616
	OLRA s. 80	
<b>SESSION 16</b> <b>Tues, Mar 10</b>	<b>Arbitration I (The Big Picture)</b>	
	OLRA ss. 48, 49	
	94. Polymer Corporation (Laskin, Arbitrator)	Q
	95. Young v. CNR (PC 1931)	CB 694
	96. Russelsteel (Arthurs)	CB 708
	97. "Lights and Sirens" (OCA)	Q
	98. CNR v. Beatty	Q
	99. Irving Pulp and Paper (SCC, 2013) (CB 712)	CB 712
	100. Association of Justice Counsel v. Canada (Attorney General) (SCC, 2017)	Q



<b>SESSION 17</b> <b>Tues, Mar 15</b>	<b>Arbitration II (Dismissal and other issues)</b>	
	<b>A. Dismissal</b>	
	101. Wm. Scott (BCLRB)	CB 740
	102. New Dominion (Beck)	CB 744
	<b>B. Another example – Drug Testing</b>	
	Irving Pulp and Paper (re-read, Session 16)	
	<b>C. Powers of arbitrators</b>	
	103. Weber (SCC, 1995)	CB 750
	104. O’Leary v. NB (SCC, 1995)	Q
<b>SESSION 18</b> <b>Thurs, Mar 17</b>	<b>The Duty of Fair Representation (DFR) and Internal Trade Union Affairs</b>	
	<b>A. DFR</b>	
	OLRA s.74	
	105. Steel v. Louisville (USSC, 1944)	CB 790
	106. Bukvitch	CB 793
	107. Atkinson	CB 798
	108. Rayonier	CB 801
	<b>B. Internal Union Affairs</b>	
	109. Berry v. Pulley (SCC, 2002)	CB 830
<b>SESSION 19</b> <b>Tues, Mar 22</b>	<b>The Constitutional Revolution</b>	
	110. BC Health (SCC, 2007)	CB 900
	111. Fraser at OCA (2009)	CB 925
	112. Fraser at SCC (2011)	CB 933
	113. MPAO (SCC, 2015)	CB 947
<b>SESSION 20</b> <b>Thurs, Mar 24</b>	<b>Employment Standards I</b>	
	<b>A. Introduction</b>	
	114. Judy Fudge, “The New Workplace”	CB 997
	115. Roy Adams, “Employment Standards in Ontario: An Industrial Relations System Analysis”	Q
	116. “In Sweden the Men Can Have it All” – New York Time	Q
	117. Why can’t Dads have it all?” – Globe & Mail, 17 November 2017	Q
	118. “MacDonalds Workers in Denmark Pity Us” - NYTimes	Q
	<b>B. Status</b>	
	119. Heller v Uber (OCA, 2019) re contracting out of the ESA (paras 1-51 and 74-76)	Q
	120. Uber v Aslam (UKSC, 2021) especially paras 57-89	Q
	121. Dionne v Commission Scolaire des Patriotes (SCC, 2014)	Q
	E.S.A. ss. 4(1), 5(1)	
	122. Modern Cleaning Concept (SCC, 2019)	Q
	<b>C. Hours of Work</b>	
	123. Falconbridge (OCA)	Q



	<b>D. Dismissal</b>	
	Re-read HOJ (Session 4)	Online
	124. Canada Labour Code ss. 240-246	
	<b>E. Multiple Regimes</b>	
	125. Curtis Products (Langille)	Q
<b>SESSION 21</b> <b>Tues, Mar 29</b>	<b>Human Rights at Work I</b>	
	<b>A. Scope</b>	
	126. British Columbia Human Rights Tribunal v. Schrenk (SCC, 2017) (read dissent carefully and think of Robichaud; Session 2)	Q
	<b>B. The Basic Framework</b>	
	127. “Meiorin” (SCC, 1999)	CB 1075
	128. “Action Travail” (SCC, 1987)	Q
	129. Fraser, Pilgrim, and Fox v AG Canada (SCC, 2020)	Q
<b>SESSION 22</b> <b>Thurs, Mar 31</b>	<b>Human Rights at Work II – “Regime Overlap”</b>	
	130. Air Canada (SCC, 2006)	Q
	131. McGill Health Centre (SCC, 2007)	Q
	132. Okanagan School District Bd. (SCC, 1992)	CB 1106
	133. Hydro Quebec (SCC, 2000)	CB 1099
	134. Stewart v. Elk Valley Coal Corp. (SCC, 2017)	Q
	135. Northern Regional Health Authority v Horrocks (SCC, 2021)	Q
<b>SESSION 23</b> <b>Tues, Apr 5</b>	<b>International/Transnational Labour Law</b>	
	<b>A. Vignette – Rana Plaza – and Canada</b>	
	136. CB 196-203	CB 196-203
	137. Das v. George Weston (Rana Plaza), paras 1-5, 31-114, 520-559	Q
	<b>B. Trade Agreements</b>	
	138. CB 158-175	CB 158-175
	<b>C. The ILO</b>	
	139. Langille, “The Curious Incident of the ILO, Myanmar, and Forced Labour”	Q
<b>SESSION 24</b> <b>Thurs, Apr 7</b>	<b>Review</b>	
	“I Fought the Law and the Law Won” or “Speaking Rationality to Power”	
	140. CUPE v. Ontario (SCC, 2003) (Q)	Q



